

Revised 03/06 WDNV

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

**FORM TO BE USED IN FILING A COMPLAINT
UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983
(Prisoner Complaint Form)**

10 CV 578 *R*

All material filed in this Court is now available via the INTERNET. See Pro Se Privacy Notice for further information.

1. CAPTION OF ACTION

A. Full Name And Prisoner Number of Plaintiff: *NOTE: If more than one plaintiff files this action and seeks in forma pauperis status, each plaintiff must submit an in forma pauperis application and a signed Authorization or the only plaintiff to be considered will be the plaintiff who filed an application and Authorization.*

1. Joe Felder # 02A0644

2. _____

-VS-

B. Full Name(s) of Defendant(s) *NOTE: Pursuant to Fed.R.Civ.P. 10(a), the names of all parties must appear in the caption. The court may not consider a claim against anyone not identified in this section as a defendant. If you have more than six defendants, you may continue this section on another sheet of paper if you indicate below that you have done so.*

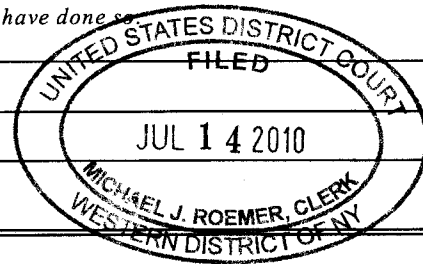
1. Correction Officer John Doe

4. _____

2. Correction Officer Matthew P. Ridemacher

6. _____

3. _____



2. STATEMENT OF JURISDICTION

This is a civil action seeking relief and/or damages to defend and protect the rights guaranteed by the Constitution of the United States. This action is brought pursuant to 42 U.S.C. § 1983. The Court has jurisdiction over the action pursuant to 28 U.S.C. §§ 1331, 1343(3) and (4), and 2201.

3. PARTIES TO THIS ACTION

PLAINTIFF'S INFORMATION *NOTE: To list additional plaintiffs, use this format on another sheet of paper.*

Name and Prisoner Number of Plaintiff: Joe Felder # 02A0644

Present Place of Confinement & Address: Attica Correctional Facility Box 149
Attica, New York 14011-0149

Name and Prisoner Number of Plaintiff: _____

Present Place of Confinement & Address: _____

DEFENDANT'S INFORMATION NOTE: To provide information about more defendants than there is room for here, use this format on another sheet of paper.

Name of Defendant: Correction officer John Doe

(If applicable) Official Position of Defendant: Correctional officer

(If applicable) Defendant is Sued in ☒ Individual and/or ☒ Official Capacity

Address of Defendant: Box 149, Attica, New York 14011-0149

Name of Defendant: Matthew P. Rademacher

(If applicable) Official Position of Defendant: Correctional officer

(If applicable) Defendant is Sued in ☒ Individual and/or ☒ Official Capacity

Address of Defendant: Box 149, Attica, New York 14011-0149

Name of Defendant: _____

(If applicable) Official Position of Defendant: _____

(If applicable) Defendant is Sued in _____ Individual and/or _____ Official Capacity

Address of Defendant: _____

4. PREVIOUS LAWSUITS IN STATE AND FEDERAL COURT

- A. Have you begun any other lawsuits in state or federal court dealing with the same facts involved in this action?
Yes ☒ No _____

If Yes, complete the next section. NOTE: If you have brought more than one lawsuit dealing with the same facts as this action, use this format to describe the other action(s) on another sheet of paper.

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s): Joe Felder

Defendant(s): Correctional officer's Diehl and Hutton

2. Court (if federal court, name the district; if state court, name the county): United States District Court

3. Docket or Index Number: 10-CV-343

4. Name of Judge to whom case was assigned: Hon. H. Kenneth Schroeder, Jr.

5. The approximate date the action was filed: April 26, 2010

6. What was the disposition of the case?

Is it still pending? Yes ☒ No ☐

If not, give the approximate date it was resolved. _____

Disposition (check the statements which apply):

☐ Dismissed (check the box which indicates why it was dismissed):

☐ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;

☐ By court for failure to exhaust administrative remedies;

☐ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;

☐ By court due to your voluntary withdrawal of claim;

☐ Judgment upon motion or after trial entered for

☐ plaintiff

☐ defendant.

B. Have you begun **any other lawsuits in federal court which relate to your imprisonment?**

Yes ☒ No ☐

If Yes, complete the next section. NOTE: If you have brought more than one other lawsuit dealing with your imprisonment, use this same format to describe the other action(s) on another sheet of paper.

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s): De Felder

Defendant(s): Dr. Lester Wright

2. District Court: WESTERN

3. Docket Number: 09-CV-0644-(SR)

4. Name of District or Magistrate Judge to whom case was assigned: Hon. H. Kenneth Schroeder, Jr.

5. The approximate date the action was filed: August 24th, 2009

6. What was the disposition of the case?

Is it still pending? Yes ☒ No ☐

If not, give the approximate date it was resolved. _____

Disposition (check the statements which apply):

☐ Dismissed (check the box which indicates why it was dismissed):

- ☐ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;
- ☐ By court for failure to exhaust administrative remedies;
- ☐ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;
- ☐ By court due to your voluntary withdrawal of claim;

☐ Judgment upon motion or after trial entered for

- ☐ plaintiff
- ☐ defendant.

5. STATEMENT OF CLAIM

For your information, the following is a list of some of the most frequently raised grounds for relief in proceedings under 42 U.S.C. § 1983. (This list does not include all possible claims.)

- | | | |
|--------------------|------------------------|-------------------------------|
| • Religion | • Access to the Courts | • Search & Seizure |
| • Free Speech | • False Arrest | • Malicious Prosecution |
| • Due Process | • Excessive Force | • Denial of Medical Treatment |
| • Equal Protection | • Failure to Protect | • Right to Counsel |

Please note that it is not enough to just list the ground(s) for your action. You **must** include a statement of the facts which you believe support each of your claims. In other words, tell the story of what happened to you but do not use legal jargon.

Fed.R.Civ.P. 8(a) states that a pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." "The function of pleadings under the Federal Rules is to give fair notice of the claim asserted. Fair notice is that which will enable the adverse party to answer and prepare for trial, allow the application of res judicata, and identify the nature of the case so it may be assigned the proper form of trial." Simmons v. Abruzzo, 49 F.3d 83, 86 (2d Cir. 1995). **Fed.R.Civ.P. 10(b)** states that "[a]ll averments of claim ... shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a single set of circumstances."

Exhaustion of Administrative Remedies

Note that according to **42 U.S.C. § 1997e(a)**, "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prison er confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

You must provide information about the extent of your efforts to grieve, appeal, or otherwise exhaust your administrative remedies, and you must attach copies of any decisions or other documents which indicate that you have exhausted your remedies for each claim you assert in this action.

A. FIRST CLAIM: On (date of the incident) February 24th, 2010,
 defendant (give the **name and position held** of **each defendant** involved in this incident) correctional officer John Doe

did the following to me (briefly state what each defendant named above did): while going to the mess hall started cursing at me and I asked him to please stop yelling at me and when we returned he told me step out of line and after searching me, repeatedly punched me about the head and face and before we returned he removed his nameplate off his shirt

The constitutional basis for this claim under 42 U.S.C. § 1983 is: Excessive Force

The relief I am seeking for this claim is (briefly state the relief sought): \$ 500,000

Exhaustion of Your Administrative Remedies for this Claim:

Did you grieve or appeal this claim? ☒ Yes ☐ No If yes, what was the result? Denied
Grievance because no witnesses

Did you appeal that decision? ☒ Yes ☐ No If yes, what was the result? Denied
Grievance

Attach copies of any documents that indicate that you have exhausted this claim.

If you did not exhaust your administrative remedies, state why you did not do so: _____

A. SECOND CLAIM: On (date of the incident) February 24th, 2010,
 defendant (give the **name and position held** of **each defendant** involved in this incident) correctional officer Matthew P. Ridemacher

did the following to me (briefly state what each defendant named above did): Held me against the wall with his forearm pushing into my throat cutting off my oxygen supply while officer John Doe repeatedly punched me

The constitutional basis for this claim under 42 U.S.C. § 1983 is: Excessive Force

The relief I am seeking for this claim is (briefly state the relief sought): \$500,000

Exhaustion of Your Administrative Remedies for this Claim:

Did you grieve or appeal this claim? ☒ Yes ☐ No If yes, what was the result? Denied
GRIEVANCE BECAUSE NO WITNESSES

Did you appeal that decision? ☒ Yes ☐ No If yes, what was the result? Denied
GRIEVANCE

Attach copies of any documents that indicate that you have exhausted this claim.

If you did not exhaust your administrative remedies, state why you did not do so: _____

If you have additional claims, use the above format and set them out on additional sheets of paper.

6. RELIEF SOUGHT

Summarize the relief requested by you in each statement of claim above.

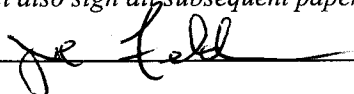
I want officer's penalized financially and an order of Protection to avoid any future retaliation for my lawsuit against Dietl and Hutton

Do you want a jury trial? Yes ☒ No ☐

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 2nd, 2010
(date)

NOTE: *Each plaintiff must sign this complaint and must also sign all subsequent papers filed with the Court.*



Signature(s) of Plaintiff(s)

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONAL SERVICES

FORM 2131E (REV. 6/06)

INMATE GRIEVANCE COMPLAINT

Held & Punished by CO's

A-

Grievance No.

56553-10

ATTICA

CORRECTIONAL FACILITY

Date

Name

Felder, J.

Dept. No.

02A0644

Housing Unit

B-216

H2-

Program

AM

08-102 PM

(Please Print or Type - This form must be filed within 21 calendar days of Grievance Incident)*

Description of Problem: (Please make as brief as possible)

Grievant

Signature

Grievance Clerk

Advisor Requested

Action requested by inmate

This grievance has been coded as a harassment grievance. It has been sent directly to the Superintendent's Office for investigation. As soon as the investigation is complete, you will receive a response from the Superintendent or his designee. You need do nothing until you get that response. This copy and grievance number are for your personal files.

1793-94

This Grievance has been informally resolved as follows:

**HARASSMENT COMPLAINTS MAY NOT BE SIGNED OFF AND
INVESTIGATION MUST BE COMPLETED ONCE LOGGED**

This Informal Resolution is accepted:
(To be completed only if resolved prior to hearing)

Grievant
Signature

Date:

If unresolved, you are entitled to a hearing by the Inmate Grievance Resolution Committee (IGRC).

Standard Operating #4040 section 701.6(d).

INMATE GRIEVANCE COMPLAINT

Grievance No.

56553-10

Attica

CORRECTIONAL FACILITY

Date February 24th, 2010

Name

Joe Felder

Dept. No.

02A0644

Housing Unit

B-21-06

Program

Small Engine

AM

Idle

PM

(Please Print or Type - This form must be filed within 14 days of Grievance Incident)

Description of Problem: (Please make as brief as possible)

on the above date while returning from last meal the officer who was stationed with the officer in the lobby told me to step out the line and after searching me and taking my I.D. card repeatedly punched me about the head and face, while Rodemix's son held me against the wall with his forearm on my throat and all this was done because as he said I talked back to him after he started cursing at me as we were going to the mess hall, also before we returned, he removed his name tag.

Grievant

Signature

Joe Felder

Grievance Clerk

Date:

Advisor Requested



YES



NO

Who:

Deputy of security

Action requested by inmate:

I want officer penalized severely for his actions

This Grievance has been informally resolved as follows:

This Informal Resolution is accepted:


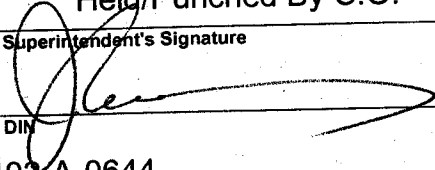
(To be completed only if resolved prior to hearing)

Grievant
Signature

Date:

If unresolved, you are entitled to a hearing by the Inmate Grievance Resolution Committee (IGRC).

FORM 2133 (REV. 6/06)

 <p>STATE OF NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES</p> <p>INMATE GRIEVANCE PROGRAM SUPERINTENDENT</p>	Grievance No. A-56553-10	Date Filed 03/02/10
	Facility Attica Correctional Facility	Policy Designation Institutional
	Title of Grievance Held/Punched By C.O.	Class Code 49
	Superintendent's Signature 	Date 03/18/10
Grievant Joe Felder	DIN 02-A-0644	Housing Unit B-21-06

Grievance Denied.

Grievant alleges that on 2/24/10, while returning from the evening meal, an officer searched him and took his I.D. card. The grievant also alleged that the officer then punched him about the head and face areas while another officer held him against the wall by his throat.

A security supervisor interviewed the grievant relative to his grievance allegations. The grievant stood by his written allegations and did not identify additional officers that were involved in the alleged incident. The grievant also did not provide witnesses that may support his grievance allegations. During the interview, the grievant was asked if he had reported the incident. The grievant said, "No." When asked why not, the grievant stated that he did not know that he was supposed to report the incident.

An officer identified in the grievance has submitted a memorandum, which refutes the allegations made by the grievant. The officer stated that the grievant's allegations are false. The officer further stated that at no time did he pull the grievant out of line to search him or take his I.D. card. The officer concluded that the grievant was not punched or held against the wall by his throat.

A facility document revealed that the grievant was seen by medical on 3/8/10 regarding the alleged incident, and no injuries were noted to the grievant. The investigating supervisor also was unable to identify the officer, who allegedly engaged in the misconduct.

Therefore, due to the information obtained in the matter, this investigation did not find any wrongdoing that had been committed by the nurse, nor did it support the allegations made by the grievant.

CR/jms
Cc: File

APPEAL STATEMENT

If you wish to refer the above decision of the Superintendent, please sign below and return this copy to your Inmate Grievance Clerk. You have seven (7) calendar days from receipt of this notice to file your appeal. * Please state why you are appealing this decision to C.O.R.C.

This investigation was a travesty of an inmate right because
becalm is not an attitude of the correction officer's at Attica,
which is known by insiders and outsiders and the supervisor is the officer's friend


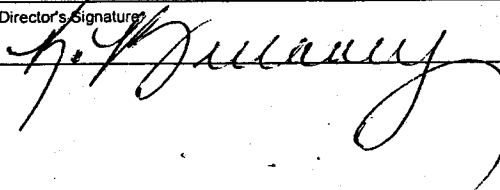
March 22nd, 2010

Joe Felder
Grievant's Signature

Date

Grievance Clerk's Signature

Date

 <p>STATE OF NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES</p> <p>INMATE GRIEVANCE PROGRAM CENTRAL OFFICE REVIEW COMMITTEE</p>	Grievance Number A-56553-10	Desig./Code I/49	Date Filed 3/2/10
	Facility Attica Correctional Facility		
	Title of Grievance Held/Punched By CO		
	Director's Signature 		Date 5/12/10

5/12/10

GRIEVANT'S REQUEST UNANIMOUSLY DENIED AS WITHOUT MERIT

Upon full hearing of the facts and circumstances in the instant case, the action requested herein is hereby denied as without merit. CORC upholds the determination of the Superintendent for the reasons stated.

CORC notes that the facility administration has conducted a proper investigation, and that Officer W... has gone on record to deny the grievant's allegations. It is also noted that Officer S... is currently unavailable to respond to the grievant's allegations; a statement will be obtained upon his return to duty. CORC also notes that the grievant was seen by medical staff as a result of his allegations, and that there were no injuries noted and no treatment required. Contrary to the grievant's assertions, CORC has not been presented with sufficient evidence to substantiate any malfeasance by staff.

CORC advises the grievant to address future similar concerns to supervisory staff, at that time, for any remedial action deemed necessary.

JA/dz

Felder, J. 02A0644
B-21-6